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Notice To Payroll Service Providers 2003 Withholding Tax Law Change

We are notifying you of a state tax law change that specifically requires a payroll service provider filing on behalf of an employer to electronically file and remit North Dakota withholding taxes. Also enclosed are several documents that provide additional information about electronic filing and payment options for North Dakota withholding tax, and what will be required of your company to implement the law change. We will address each of these documents further in this letter. Please note that some of the instructions in our publications do not yet reflect the law change.

The 2003 North Dakota Legislature recently passed House Bill 1108 which adds a new provision to North Dakota Century Code Section 57-38-60 relating to a payroll service provider's requirement to electronically file and pay North Dakota withholding taxes. For this purpose, a "payroll service provider" means a third-party business that (1) contracts with an employer to file and pay the federal and state withholding taxes on behalf of the employer and (2) files and pays the employer's *federal* withholding taxes *electronically*. **Note: If you are already filing and remitting North Dakota withholding tax, including wage information returns, electronically for your clients, this law change will not affect your current filings with North Dakota.**

What House Bill 1108 Says

A new subsection to section 57-38-60 of the North Dakota Century Code is created and enacted as follows:

A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the returns required by subsections 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

Effective Date of Law Change

The law change takes effect August 1, 2003. Beginning with the tax period ending September 30, 2003 (3rd quarter of 2003), a payroll service provider (as defined above) must file and pay North Dakota withholding taxes electronically. The law change also applies to the year-end filing of the wage information returns (W-2s) that are due February 28, 2004, with the transmittal return (Form 307). If a payroll service provider is unable to comply with the law change when required, an extension may be requested.

Accepted Electronic Media

Form 306, North Dakota Withholding Tax Return can be electronically filed using one of two EFT (electronic funds transfer) payment options available: ACH Credit or ACH Debit. The EFT payment constitutes both the return and the payment for the employer, so Form 306 is not required to be filed when using ACH Credit or ACH Debit. Here's a brief description of how each payment option works.

- **ACH Credit Option (Withholding E-File)**

The ACH credit option (also called Withholding E-File) is an electronic transaction where you instruct your bank to debit your business's bank account and credit the State's bank account. Since you are the originator of the transaction, you must pay the fees charged by the bank for any setup costs and for each ACH credit transaction initiated. The bank originates your payment using the "Cash Concentration or Disbursement plus Tax Payment Addendum" (CCD+TXP) format. This format is the standard format that has been adopted for tax payments by the National Automated Clearing House Association (NACHA). The bank usually prepares the CCD+ entry detail record, but you will need to provide the bank the TXP addenda record layout and tax account information required for North Dakota. The TXP addenda record provides the return information necessary to identify the payment and properly post it to your client's withholding tax account. You must provide your bank the filing information required to complete the TXP addenda record. The record format for the TXP addenda record is included in the *Withholding E-File Handbook for ACH Credits* enclosed with this letter. You will also be provided the TXP record format when instructed to initiate an ACH credit prenote. The CCD+TXP record format only allows for one addenda record. If your bank supports the CTX format, you can file for more than one account or tax period in one EFT transmission. The CTX format allows for multiple addenda records in one ACH credit transaction. The Office of State Tax Commissioner has limited the CTX format to 100 accounts or records in one ACH credit transaction.

In order to receive the State's bank routing/transit and bank account numbers you must complete a Withholding Tax E-File Participation application (Form 301-EF). See the "*EFT Registration*" section of this letter for further details. Also refer to the *Withholding E-File Handbook for ACH Credits* for more information on this payment option.

- **ACH Debit Option (Withholding Telefile)**

The ACH debit option (also called Withholding Telefile) is an electronic transaction where you authorize the State of North Dakota to electronically transfer tax payments from your bank account to the State's account. Any bank processing fees are paid by the State. To authorize the amount for the State to transfer, you initiate the tax payment through a touch tone telephone to a toll-free number with the North Dakota Withholding Telefile system. You will be prompted to enter the employer's account number and return information using the touch tone keypad. There is no cost to you and no paper return to file. Your call takes care of filing the return and payment. To be allowed to use the Telefile system, you must complete a Withholding Tax E-File Participation application (Form 301-EF) for each employer's account. Once registered, we will conduct a "prenote" to ensure the banking information is correct before you are allowed to e-file the withholding return. See the "*EFT Registration*" section of this letter for further details. Also refer to the enclosed *Withholding E-File Handbook for ACH Debits* for more information on how to file using this payment option.

Form 307 – North Dakota Transmittal of Wage and Tax Statements (W-2) Return is filed annually with the employer's state copy of Form W-2. Payroll service providers are required to submit the Form W-2s either via magnetic media supported by North Dakota or as an e-mail with a text file

attachment. The format must conform to the specifications set out in Social Security Administration's publication "Magnetic Media Reporting and Electronic Filing (MMREF-1)". If the Form W-2s are filed on magnetic media, the Form 307 and the Magnetic Media Transmittal Form (see enclosed *Income Tax Guideline: Information Returns*) must be submitted with the magnetic media. The Form 307 itself may not be filed electronically, but must be filed in paper form.

EFT Registration

In order to file Form 306 electronically and remit payment using EFT, you must have each employer registered for electronic filing with us. This includes employers which may have zero tax due returns. To register, a Form 301-EF must be completed for each employer and filed with the Office of State Tax Commissioner. A section on the E-File application accommodates payroll services. It is important to identify you as the payroll service handling a particular employer's filing of the state income tax withholding returns so we can discuss with you any problems with the tax filings made on the employer's behalf. Also, if the bank account used for electronic funds transfer belongs to the payroll service, an authorized officer or individual of the payroll service must also sign the Form 301-EF. The payroll service may complete the form for the employer, but the employer must still sign the Form 301-EF in order for us to discuss the employer's withholding returns with the payroll service. Note however, that if there is already a Form 500 for the employer on file in our office designating the payroll service to represent the employer in their withholding tax filings with North Dakota, the employer's signature is *not* required on Form 301-EF. We have enclosed a copy of Form 301-EF and Form 500 for your reference. Both of these forms are also available on our web site at www.ndtaxdepartment.com.

Registration deadline – September 15, 2003. In order to implement the law change in time for the third quarter withholding tax return due October 31, 2003, the completed Form 301-EF (and voided check, if ACH Debit is selected) must be mailed or faxed to the North Dakota Office of State Tax Commissioner on or before September 15, 2003. The fax number is (701) 328-0146.

Since the employer has a role in the registration process with you (unless there is a Form 500 on file designating you as the employer's agent), we are taking the first step to notify the employers. All employers currently filing paper returns will receive a letter (see enclosed letter to employers) summarizing the law change and a copy of the Form 301-EF along with the June mailing of the Form 306 for the 2nd quarter of 2003. Employers filing on an annual basis are also being notified separately. We are advising those employers who utilize a payroll service provider to get in contact with their provider to get the necessary registration form completed.

We recognize coordinating the registration process with your employer clients may take more time. So, if this deadline to implement the law change causes a hardship for the payroll service to comply, the payroll service may request an extension from our office. Once an employer is set up for withholding e-file, the payroll service can begin submitting returns and payments electronically for that employer.

Frequently Asked Questions

Some common questions we have received from a few of the payroll service providers as word has gotten to you about the law change are listed here for everyone's information.

Is the Form 301-EF required to be completed for every employer? Yes. The registration form is required of every employer in order for us to switch that employer's account to E-file. Without a Form 500 on file, the employer's signature is also necessary to be able to discuss the state filings with the payroll service. Under state law, the employer is still held liable for the payment of the tax and any late filing fees,

regardless of the designation of an agent. Once an account is coded for E-file, paper returns are no longer sent out. We must also code the employer's account to accept the electronic payments so they will not reject in our system.

Is an ACH Credit or ACH Debit required for “zero” returns? Yes. Since the EFT transaction also constitutes the return, a “zero” payment transaction is necessary to record the filing of the Form 306 for the employer. Failure to do so will cause the employer's return to be delinquent.

Can amended and delinquent returns be filed electronically? With the ACH credit payment option you can file an original, delinquent, and amended Form 306 for zero and tax due returns. There is a field in the TXP addenda record to indicate “A” for amended return. The penalty and interest can be included in the payment, or will be billed by our office. If a payroll service provider does not have the capability to electronically pay tax due on an amended return, amendments will be accepted on paper. With the ACH Debit payment option, you can file original and delinquent returns for zero and tax due. Penalty and interest is automatically added to the tax when the call is placed after the due date. The ACH Debit payment option cannot be used for amended returns with tax due. In all cases, amended returns requesting a refund must be filed on paper.

Can notices of assessment also be paid electronically? No, notices of assessment must be paid by check at this time. Eventually we hope to handle EFT for our Accounts Receivable as well.

Is an ACH Credit “prenote” required for every employer's withholding tax account? No. Once the payroll service provider's tax payment and TXP addenda record layout to the bank and our office has been tested, it is not necessary to do a prenote for every employer's account.

Will the Tax Department reject an electronic payment if the employer is not registered to e-file? Yes. It is not possible to initiate an ACH debit since our Telefile system accepts only registered employers. While an ACH credit transaction can be transmitted, the TXP addenda record will reject in our system if the employer is not registered to e-file. Our usual recourse will be to reject the payment for that employer unless we can get the necessary paperwork submitted in time to accept the payment. First, it is important that the payroll service provider makes sure the employer is registered for withholding (Form 301) with North Dakota before filing any withholding returns with us. Form 301-EF must also be completed and approved by our office before an electronic payment can be submitted for the employer. If the registration process is not complete in time to e-file the employer's return, then that tax period should still be filed on paper. If we have to reject a payment, an employer may be subject to penalty and interest charges if proper payment is made after the due date.

The enclosed handbooks for ACH Credit and ACH Debit also address many of the questions we encountered when first implementing our Withholding E-File program. The registration form 301-EF, Withholding E-File handbooks, and guidelines are also available on our web site www.ndtaxdepartment.com under Individual Withholding Electronic Filing and Publications.

Contact Information

If you have any questions, please contact our Withholding Tax Section as follows:

Web site: www.ndtaxdepartment.com
E-mail: withhold@state.nd.us
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